CF 1001-01

(3)

BEFORE THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

IN THE MATTER OF WRIT PETITION NO. 1175 /2002.

PETITIONER : Smt. Padma Mathrani, W/o Shri Jairam Mathrani, aged about 44 years, R/o Qr.E/13, Awantika Colony, Jagdalpur (C.G.)

VERSUS

RESPONDENTS :

1. State of Chhattisgarh, through Secretary , Public Works Department, D.K.S. Bhavan, Mantralaya.
2. Chief Engineer, PWD East Zone, Raipur
3. Executive Engineer, PWD, North Bastar, Jagdalpur (C.G.)
4. Sub Divisional Officer, PWD, No.3, Jagdalpur (C.G.)

P.R. No. 1171/02
Received by Shri D.S.R.P.S.K. Jain
Date 12/6/02

PETITION UNDER ARTICLES 226 / 227 OF THE CONSTITUTION OF INDIA FOR ORDER / DIRECTIONS IN NATURE OF WRITS OF MANDAMUS, CERTIORARY OR ANY OTHER WRIT OF LIKE NATURE

AFR

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

WRIT PETITION NO.1175 OF 2002

Smt. Padma Mathrani

Versus

State of Chhattisgarh and Others

Post for orders on 27th October, 2005

Sd/-
Satish K. Agnihotri
Judge

(24)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO.1175 OF 2002

Smt. Padma Mathrani

Versus

State of Chhattisgarh and Others

Present: Miss. Sharmila Singhai, learned counsel for the petitioner.

Mr. Pankaj Shrivastava, learned Panel Lawyer for the State / respondents.

O R D E R

(Passed on 27 of October, 2005)

The present petition filed under Article 226/227 of the Constitution of India impugns the order dated 06.10.2000 (Annexure-P/6) passed by respondent No.4 whereby the service of the petitioner was terminated. The petitioner further seeks regularisation of his services on the post of Copyist.

2. The admitted facts in nut-shell are that the petitioner was appointed as Copyist on daily wage basis on 01.01.1988 against the vacant post in reserve category. The service of the petitioner was discontinued from 06.06.1988. The petitioner was again re-appointed on the same post on 01.02.1989. Thereafter, she continued on the said post till 18.03.1997. The service of the petitioner was terminated on the ground that her services were no longer required.

3. Being aggrieved, the petitioner filed an application under Section 31 (3) read with Section 61 of the M.P. Industrial Relations Act 1960 before the

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Labour Court, Jagdalpur, Bastar. The Labour Court, Jagdalpur, Bastar after having heard both the parties, by its order dated 20.05.1999 (Annexure-P/1) came to the conclusion that the petitioner had worked from 01.01.1988 to 19.03.1997 continuously as such she had obtained the status of permanent employee. The petitioner could have been terminated either after holding departmental enquiry or by way of retrenchment after making the payment of retrenchment compensation. It was found that the service of the petitioner was retrenched without payment of retrenchment compensation as required under the provisions of the law under Section 25-F of the Industrial Disputes Act, 1947 (for short *"I.D. Act")* and departmental enquiry was also not held, as such the termination order dated 18.03.1997 was held as illegal and improper. Accordingly, respondents 3 and 4 were directed to reinstate the petitioner on the post of Copyist with effect from 19.03.1997 and to pay 50% of the back-wages. It was further directed to reinstate the petitioner within a period of 45 days.

4. Respondent No.3 filed an appeal before the Industrial Court against the order dated 20.05.1999 passed by the Labour Court, Jagdalpur, Bastar. The Industrial Court vide its order dated 08.04.2000 dismissed the appeal affirming the finding and the order passed by the Labour Court, Jagdalpur, Bastar. The respondents did not prefer any petition against the said order dated 08.04.2000 passed by the Industrial Court in appeal and as such the same became final. Pursuant to the dismissal of the appeal filed by respondent No.3, the petitioner was reinstated in the service on 06.10.2000 forenoon. Respondent No.4 on the same day i.e. 06.10.2000 retrenched the petitioner after paying the retrenchment compensation under Section 25-F of the I.D. Act, afternoon. The petitioner has preferred this writ petition challenging the order dated 06.10.2000 passed by respondent No.4 and

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further seeking a writ / direction against the respondents to regularize the services of the petitioner on the post of copyist.

5. Miss Sharmila Singhai, learned counsel appearing for the petitioner submitted that the impugned order dated 06.10.2000 passed on the same day afternoon the petitioner joined the service is vindictive and malafide. The termination of the petitioner cannot be held as retrenchment as defined under Section 2 (oo) of the I.D. Act because it is not the termination for any reason except the termination on account of vindictive attitude of respondents 3 and 4 in exercise of malafide power, because the petitioner succeeded before the Labour Court and respondents had reinstated the petitioner pursuant to the orders of the Labour Court and the Industrial Court. It was submitted that since the order of termination cannot be held as retrenchment under the provisions of the Industrial Disputes Act, the order be declared as illegal and be quashed.

6. On the point of regularisation, learned counsel for the petitioner submitted that the Labour Court in its order dated 20.05.1999 passed in case No.11/97 MPIR Act, clearly held that the petitioner had been working continuously from 01.01.1988 to 19.03.1997 and therefore, the petitioner was entitled to attain the status of permanent employee under Section 2 of the Standard Standing of Orders. Even otherwise, in view of the fact that the petitioner had worked for a long period against the clear vacancy of reserve post being Scheduled Caste, the petitioner was entitled to be regularised in service.

7. Mr. Pankaj Shrivastava, learned Panel Lawyer, appearing for the State / respondents, on the contrary, submitted that the Labour Court by its order dated 20.05.1999 passed in case No. 11/97 MPIR Act has quashed the earlier order of termination dated 18.03.1997 on the ground that the

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petitioner was not paid retrenchment compensation under Section 25-F of the I.D. Act and there was no departmental enquiry against the petitioner. He submitted that the present order dated 06.10.2000 which was passed after payment of retrenchment compensation is retrenchment under Section 2 (oo) of the I.D. Act. He further submitted that the allegations of victimization or malafide are without any basis as the employer has every right to terminate the service of a workman for any reason whatsoever by way of retrenchment on payment of retrenchment compensation. He further submitted that in the present case, the order dated 06.10.2000 was retrenchment as retrenchment compensation had been paid. He also submitted that there was an alternative remedy of raising the dispute before the Labour Court as such this Court has no jurisdiction to entertain the present petition directly under Article 226 of the Constitution of India in its extraordinary jurisdiction and prays for dismissal of the writ petition accordingly.

8. After having considered the rival contentions of the parties and having perused the records of the case, it is found that the Labour Court in its order dated 20.05.1999 had recorded a clear finding that the petitioner had worked from 01.01.1988 to 19.03.1997 continuously. It is evident that the first order of termination dated 18.03.1997 was passed without holding departmental enquiry and without paying the retrenchment compensation under the provisions of Section 25-F of the I.D. Act. It is further evident that the service of the petitioner was terminated under the garb of retrenchment on 06.10.2000 afternoon immediately when the petitioner was reinstated pursuant to the order dated 20.05.1999 passed by the Labour Court and affirmed by the Industrial Court in appeal by order dated 08.04.2000. Respondents 3 and 4 have acted in undue haste by serving the order of termination in the afternoon with payment of retrenchment compensation by

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a banker's cheque within few hours of reinstatement. In the facts and circumstances of the case, it appears that respondents 3 and 4 had kept the banker's cheque ready on 06.10.2000 to terminate the service of the petitioner immediately after reinstating the services of the petitioner. Respondents 3 and 4 are trying to defeat the intention and object of the legislation by terminating the service of the petitioner on the same day.

9. The objection of learned counsel for the respondents-State is that this Court has no jurisdiction in view of availability of the alternative remedy. The petitioner ought to have filed application before the Labour Court first, being an industrial dispute and not before this Court directly in a petition under Article 226 of the Constitution of India.

10. It is settled principle of law that the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, inspite of the alternative statutory remedies, is not affected. It is further settled principle of law that rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. Reference may be made to the decisions of the Supreme Court in the cases of **Whirlpool Corporation Vs. Registrar Trade Marks, Mumbai and others {(1998) 8 SCC -1}**; **Harbanslal Sahnia and another Vs. Indian Oil Corpn. Ltd. and others { (2003) 2 SCC – 107}**; **T.K. Rangarajan Vs. Govt. of Tamilnadu and others, (AIR 2003 SC – 3032)**; **U.P. State Bridge Corporation Ltd. and others Vs. U.P. Rajya Setu Nigam S. Karmachari Sangh (2005 AIR SCW-3149).**

11. The Supreme Court in the case of **Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others ((1991) 1 SCC -28,** has observed in para 15 as under :

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> " It is unfair and unreasonable to remove people who have been rendering service since some time as such removal has serious consequences. The family of the employee which had settled down and accommodated its needs to the emoluments received by the bread winner, will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered 'age barred' for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution."

12. In the present case, it is true that the dispute raised before this Court is in nature of industrial dispute and in normal circumstances, the petitioner ought to have filed the application seeking redressal of his grievance before the Labour Court first before coming to this Court in a petition under Article 226/227 of the Constitution of India. In the first round of litigation, the Labour Court had already recorded a finding with regard to the appointment of the petitioner and continuation of the service of the petitioner which was affirmed by the Industrial Court in appeal. The said finding had attained finality in view of the fact that the respondents had not preferred any further petition challenging the orders of the Labour Court and that of the Industrial Court. In the present case, the respondents 3 and 4 had tried to circumvent and defeat the order dated 20.05.1999 passed by the Labour Court and the order dated 08.04.2000 passed by the Industrial Court by issuing the impugned order on the same day afternoon when the petitioner was

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reinstated in the service in compliance of the orders passed by the Labour Court and the Industrial Court. As such, the extraordinary situation has arisen and under these facts and circumstances whether the petitioner be driven to the Labour Court for seeking remedy against the order of termination or this Court should decide the case in exercise of its extraordinary jurisdiction. In the facts and circumstances of the case, I am of the view that this Court has extraordinary jurisdiction to meet such circumstances by entertaining the petition under Article 226/227 of the Constitution of India without directing the petitioner to avail first alternative remedy.

13. On the issue of regularisation, the petitioner cannot raise the issue of regularisation as the petitioner is not in service. After joining the service the petitioner can raise the dispute of regularisation before the appropriate forum in accordance with law.

14. In view of the above stated facts, the impugned order dated 06.10.2000 deserves to be quashed. Accordingly, the impugned order dated 06.10.2000 is quashed and the petition is allowed to the extent indicated above with a direction that the petitioner be reinstated immediately in service with effect from 06.10.2000 with all consequential benefits including 50% of the back-wages. The petitioner was granted 50% back-wages by the Labour Court in the earlier order dated 20.05.1999. Accordingly, 50% back-wages is being granted in the present case also. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge